



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2018-0302]**

**Hours of Service of Drivers: Transco, Inc.; Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from Transco, Inc.

(Transco) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers.

Transco requests that its drivers be permitted to comply with the 30-minute rest break requirement while performing on-duty, not-driving tasks. The requested exemption would apply to all Transco drivers in its grocery and food service divisions who make wholesale deliveries to grocery and convenience stores. Transco believes that the exemption, if granted, will achieve a level of safety equivalent to the level that would be achieved absent the exemption. FMCSA requests public comment on Transco's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0302 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; Telephone: (202) 366-2722; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

#### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0302), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2018-0302" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-

addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## **III. Request for Exemption**

Transco seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). Specifically, Transco requests an exemption that would allow its drivers to take a 30-minute on-duty, non-driving break in place of the 30-minute off-duty rest break currently required. McLane, Transco's parent company, is one of the nation's

largest entities engaged in supply chain services, providing grocery and foodservice supply chain solutions for convenience stores, mass merchants, drug stores and restaurants throughout the United States. Approximately 3,580 Transco drivers would be eligible for the requested exemption. These drivers utilize approximately 1,700 CMVs in Transco's fleet, which consist almost exclusively of tractors equipped with sleeper berths, usually hauling 48 or 53-foot trailers. In most cases Transco's drivers operate in two-driver teams. Routes for these drivers include numerous, frequent stops to make deliveries of groceries to retailers. On these trips, Driver B goes directly into the sleeper berth at the beginning of the trip while Driver A conducts all pre-departure inspection requirements and then drives to the first delivery. This allows Driver B to delay starting his duty period until a time that is less than 14 hours from the work tour completion, thereby ensuring compliance with the 14-hour rule. Depending on travel times, Driver B usually starts working sometime between the first and third delivery stop. When Driver B comes out of the sleeper berth, he or she rides in the passenger seat while Driver A drives between stops. The two drivers have overlapping working tours and unload together at most stops in the middle of the trip. Until the end of Driver A's 14-hour duty period, the drivers may alternate driving and resting in the passenger seat between deliveries. Once Driver A reaches his or her 14-hour limit, Driver A will often go into the sleeper berth, but is allowed to remain on duty and perform non-driving activities. Therefore, at some point, usually when approximately one-half of the driving for a work tour has been completed, Driver B will take over driving duties and Driver A will sit in the passenger seat between stops. Since Driver B did not begin his or her duty period until exiting the sleeper berth, Driver B will have sufficient time available to drive during the rest of the

work tour. Similarly, because Driver A ceases driving when approximately one-half of the work tour has been completed, he or she does not drive beyond the 14 hour on-duty window in which driving is permitted. Total trip time averages 17.2 hours. However, total driving time for both drivers combined averages just 9.1 hours. Each driver spends, on average, only 4.55 hours or 32.9% of their working tour engaged in driving, again much less than the 11 hours maximum time allowed.

Transco contends that its operations are characterized by several factors that make the driving involved low risk and less susceptible to the type of fatigue associated with long-haul driving for the following reasons:

- Transco's drivers operate largely on local roads at low speeds, which reduces fatigue risk. According to Transco, most drowsiness-related crashes occur at night in low-traffic conditions on rural interstates or other rural highways. By and large these conditions are the opposite of the conditions experienced by Transco's drivers, who spend most of their driving time on local roads at low speeds;
- Its operations are characterized by multiple short driving periods interrupted by breaks, which precludes development of time-on-task fatigue and improves driver performance. Its drivers alternate between driving, unloading, and resting without spending significant continuous periods of time driving;
- Its drivers have regular schedules and routes and return home after every trip. Approximately 85% of Transco's drivers work fixed schedules and routes with minimal trip-to-trip variations. Transco's trips begin and end at the same place.
- Transco practices proactive safety management. In its application, Transco highlights several additional proactive safety management practices currently in

place in connection with its grocery operations. These include DriveCam video monitoring; increased safety inspections and meetings; mandatory driver safety training; and manufacturer-installed collision avoidance systems on the vehicles.

According to Transco, as a result of these operational differences, the 30-minute rest break requirement does not increase safety when applied to their drivers; instead, it claims the requirement may very well decrease road safety for its drivers. For the typical long-haul CMV driver, the 30-minute rest break serves as an opportunity to break the monotony of driving and relieve some of the stress of continuous driving, but Transco's drivers currently have breaks, which includes physical exercise, several times each day. Providing this exemption would in fact increase safety overall by reducing Transco's mileage exposure, and thus crash risk, by over 4 million additional miles per year.

Transco believes that the requested exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the current regulation. Transco gives the following reasons why the Agency should approve the exemption request: (1) Allowing its drivers to substitute a 30-minute on-duty, non-driving break for a 30-minute off-duty break will not reduce safety; (2) No more than 50% of their logged time per working tour is "on-duty driving" time and the non-driving on-duty time is primarily devoted to pick-ups, deliveries and like operations; (3) They return to their point of origin at the end of their trip; (4) No driving is performed 14 hours after coming on duty; (5) Drivers do not drive if more than 8 hours have passed since the driver engaged in 30 consecutive minutes of on-duty non-driving activity; and, (6) The drivers operate CMVs equipped with electronic logging devices compliant with

the Agency's regulations or compliant automatic on-board recorders for the period allowed for the use of such devices by FMCSA regulations.

A copy of Transco's application for exemptions is available for review in the docket for this notice.

**Issued on:** October 12, 2018.

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Larry W. Minor,  
Associate Administrator for Policy.

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